

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BERNARD SMITH,

Defendant and Appellant.

G053598

(Super. Ct. No. 06ZF0138)

ORDER DENYING
REHEARING AND
MODIFYING JUDGMENT; NO
CHANGE IN JUDGMENT

The opinion filed on November 4, 2016, is hereby modified as follows:

On page 3, at the end of the second full paragraph, insert the following:

In a petition for rehearing, appellant’s counsel contends “[t]his court mistakenly failed to consider appellant’s request that a new attorney be appointed to represent him in this appeal.” Because our review has disclosed no issue that is reasonably arguable, we deny Smith’s request for the appointment of new counsel. (*People v. Wende* (1979) 25 Cal.3d 436, 442-443.)

Appellant's petition for rehearing is DENIED. This modification does not change the judgment.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.

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G053598

(Super. Ct. No. 06ZF0138)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Gary S. Paer, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

In July 2012, a jury convicted Bernard Smith of murder and other felonies,
and he received a prison sentence of life without possibility of parole (LWOP). The trial

court ordered him to pay victim restitution in the amount of \$7,425.87 (Pen. Code, § 1202.4, subd. (f); all statutory citations are to the Penal Code). We affirmed the judgment, but directed the trial court to amend the abstract of judgment to reflect Smith and his codefendants were jointly and severally liable for the restitution.

In April 2016, Smith filed a motion in propria persona seeking to vacate the order for victim restitution. The court denied the motion, and Smith appealed.

Appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel summarized the facts and procedural history of the case, but raised no specific issues, and asked this court to review the record to determine whether there were any arguable matters. Counsel submitted a declaration stating he had thoroughly reviewed the record. He advised Smith he was filing a *Wende* brief, and that Smith could personally file a supplemental brief on his own behalf raising any issues he believed worthy of consideration. Counsel stated he had mailed a copy of the brief and appellate record to Smith. Counsel also advised Smith he could file a request for the court to relieve him as counsel. Smith availed himself of his right to file a supplemental brief, which we discuss below. (*People v. Kelly* (2006) 40 Cal.4th 106, 111 [appellate court must address issues raised personally by appellant in a *Wende* proceeding].) We have reviewed the record, found no arguable issues, and therefore affirm the judgment.

DISCUSSION

In his supplemental brief, Smith contends a person sentenced to LWOP may not be assessed victim restitution because restitution is designed to “rehabilitate the defendant,” he is “never getting out of prison,” and rehabilitation is an “absur[d]ity.” Smith did not raise this issue on appeal from the judgment. To the extent the claim is reviewable (see *People v. Slattery* (2008) 167 Cal.App.4th 1091 [“unauthorized sentence” exception]), we disagree victim restitution is unauthorized where the defendant is sentenced to serve LWOP. Smith cites *People v. Oganessian* (1999) 70 Cal.App.4th

1178. *Oganesyan* held the trial court did not err in failing to impose a parole revocation fine (§ 1202.45) where the defendant was sentenced to both LWOP and to a determinate sentence. But *Oganesyan* noted, ““California has adopted a comprehensive constitutional and legislative scheme for providing restitution for crime victims. Article I, section 28 of the California Constitution provides, “It is the unequivocal intention of the People of the State of California that *all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.*” This right has been recognized statutorily as well. (§ 1202.4, subd. (a)(1).)”” (*Id.* at p. 1184, italics added.) Nothing in *Oganesyan* suggests the right of a victim to obtain restitution is dependent on whether the defendant will obtain release from prison. A person can be rehabilitated even if he is never released from prison. (See *People v. Richards* (1976) 17 Cal.3d 614, 620 [restitution serves salutary purpose of making a criminal understand he has harmed not merely society in the abstract but individual human beings and he has a responsibility to make them whole], disapproved on another point in *People v. Carbajal* (1995) 10 Cal.4th 1114, 1126-1127.)

Smith also cites *Kelly v. Robinson* (1986) 479 U.S. 36, 46. *Kelly* held restitution obligations imposed on a criminal defendant as a condition of probation in state criminal proceedings are not subject to discharge in Chapter 7 bankruptcy proceedings. This case does not assist Smith.

Following *Wende* guidelines, we have reviewed counsel’s brief, Smith’s supplemental brief, and the appellate record, and discern no arguable issue. We therefore affirm the order. (*Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The order is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.